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August 15, 2011

Via ECF

The Honorable Arthur D. Spatt
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *Paone v. Microsoft Corporation*, Civil Action No. 2:07-cv-02973-ADS-ARL

Dear Judge Spatt:

On behalf of defendant Microsoft Corporation, I am writing to respond to the Court's Order of August 10, 2011 (Dkt. 135) that asks three questions regarding two Microsoft submissions filed July 28, 2011 (Dkt. Nos. 132 & 133).

The first question asks for the purpose of the submissions. The purpose of Microsoft's July 28 filings is to avoid reopening discovery. After the close of discovery, Microsoft released products that include features already at issue in the case. To include these products in this case but avoid reopening discovery, the parties agreed on the content of Microsoft's July 28, 2011 submissions.

The second question asks for the basis for Microsoft's motion to seal exhibits to the submissions. The third question asks for the basis for Microsoft's request that the exhibits to the submissions not be reflected by name on the public docket sheet in this case. Microsoft had requested sealing the exhibits because the exhibits contain Microsoft's source code that has been designated "confidential" pursuant to the Protective Order in this case. But because Microsoft has produced the confidential source code with production (bates) numbers, the parties will instead rely on the production-number citations in the submissions so as to avoid the need for sealed exhibits. Therefore, Microsoft herewith attaches its submissions without the exhibits and without reference to exhibits. The attached submissions further include a correction to the statements included in the July 28, 2011, submissions.

Microsoft respectfully requests that the attached two submissions replace Microsoft's July 28, 2011 submissions corresponding to Docket Nos. 132 and 133.

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Plaintiff reviewed this letter and the attached revised submissions and has no objections.

Respectfully submitted,

Daniel J. Goettle
Attorney for Defendant, Microsoft

Encl: (1) Microsoft's Representation regarding BitLocker-To-Go to replace Docket No. 132
(2) Microsoft's Representation regarding Source Code to replace Docket No. 133

cc: Counsel of record via ECF